

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions
of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

19 CFR Part 171

(T.D. 89-83)

CUSTOMS REGULATIONS AMENDMENT RELATING TO THE DEFINITION OF FRAUD UNDER 19 U.S.C 1592

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to incorporate a revision of the definition of "fraud" in the penalty guidelines for violations of 19 U.S.C. 1592 published as Appendix B to Part 171 (19 CFR 171, Appendix B). The definition of "fraud" is changed by removing the requirement that intent to defraud the revenue of the United States be proven as an element of the violation. This change brings the Customs guidelines into conformity with the current legal requirements applicable to the Government's burden of proof in civil fraud cases. Under the new definition, the critical element necessary to prove the violation is the intent to commit the fraudulent act or omission. The document also modifies the definition of "gross negligence" to maintain the distinctions between the two types of violations.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Regulatory Procedures and Penalties Division (202-566-8317).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Appendix B to Part 171, Customs Regulations (19 CFR Part 171, Appendix B), sets forth the revised penalty guidelines for violations of 19 U.S.C. 1592. Section 1592 imposes monetary penalties and other sanctions for entering, introducing, or attempting to enter or introduce any merchandise into the commerce of the U.S. by means of any document, written or oral statement, or act which is material and false, or any omission which is material. The guidelines provide

for, among other things, mitigation of the monetary penalty according to the degree of culpability involved in the violation of § 1592.

Section (B) of the revised penalty guidelines in Appendix B to Part 171 lists and defines three degrees of culpability as: negligence, gross negligence, and fraud. In a Federal Register notice of December 10, 1986, (51 FR 44483), the Customs Service announced a proposed amendment of the definition of fraud in these guidelines. The guidelines are intended to provide internal guidance to Customs employees, and are not a part of the Customs Service Regulations. Although they are not technically subject to the requirements of the Administrative Procedures Act (5 U.S.C. 553(b)(A)), members of the public were offered the opportunity to submit comments on the proposed amendment to the definition.

As originally proposed, the definition for fraud under section 1592 would have been changed to read:

"A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, and not because of mistake or accident or other innocent reason, as established by clear and convincing evidence."

DISCUSSION OF COMMENTS

The Customs Service received sixty-five comments from members of the public. The great majority of these opposed some aspect of the proposed redefinition.

Comment:

Several comments expressed concern that by placing the phrase, "as established by clear and convincing evidence" after the phrase, "and not because of mistake or accident or other innocent reason", Customs was changing the burden of proof so that an alleged violator would have to prove his innocence in order not to be accused of fraud.

Response:

It was not the intention of Customs to change the Government's burden of proof in such instances. Accordingly, a modification of the definition has been made to clarify this point.

Comment:

That "fraud," in general, requires intent to commit an act with knowledge of its consequences and with intent to bring about such consequences.

Response:

Since section 1592 is a civil statute, the elements of fraud that must be established for penalties thereunder differ in some respects from those relating to criminal fraud. The required element of in-

tent in civil fraud cases is intent that a representation be made, that it be directed to a particular person or class of persons, that it convey a certain meaning, that it be believed and that it shall be acted upon in a certain way.

By amending the definition of fraud under the guidelines, Customs merely is adhering to the general principle applied in civil fraud cases that "the intent which becomes important is the intent to deceive, to mislead, to convey a false impression." Thus, the intent under the new definition is directed to the making of the false representation or omission, as opposed to causing the consequences of such representation or omission (e.g., duty loss, quota violation, etc.).

Comment:

The proposed change to the definition of fraud destroys the distinction between fraud and gross negligence.

Response:

Under the new definition of fraud, the degree of culpability of fraud and gross negligence will remain distinguishable. For fraud, Customs still will be required to establish by clear and convincing evidence that the violator knew at the time of the import transaction involved, that the material false statement was made or that a material omission had occurred.

Inasmuch as the phrase, "deliberate intent to defraud the revenue or otherwise violate the law" will not be a part of the new definition of fraud under the guidelines, the phrase, "but without intent to defraud the revenue or violate the laws of the United States," is being eliminated from the definition of "gross negligence" under the guidelines. The latter language no longer will be needed to distinguish the definition of "gross negligence" from the succeeding definition of "fraud" set forth in the guidelines.

Comment:

That Congress intended that "fraud" under section 1592, include the element of "intent to defraud the revenue or intent to violate the law," since this was a part of the definition of fraud that existed in the Customs guidelines at the time of the 1978 amendment of the statute.

Response:

Customs believes that if Congress had intended that Customs not be free to adopt a definition consistent with the current trends in the law with respect to the degrees of culpability specified in the statute, Congress would have included a definition in the statute. For example, to eliminate the possibility that a lesser burden of proof, i.e. "preponderance of the evidence," might be employed in civil forfeiture cases, Congress specifically required that section 1592 violations based upon fraud be established by the Government by "clear and convincing evidence." (19 U.S.C. 1592(e)(2)) Thus, by

its inaction, Congress preserved the agency's ability to define the terms.

Comment:

That small importers, brokers, as well as multinational companies, while having good intentions will be more susceptible to penalties and seizures under section 1592 based upon fraud.

Response:

Customs does not believe that the size, frequency, or complexity of the importer's business will have any bearing on the decision of whether or not to allege fraud in the prosecution of violations of section 1592. The actions, rather than the identities, of the parties are the determining factors considered by Customs when seizure or other actions are initiated for violations of section 1592.

DETERMINATION

After consideration of all the comments received in response to the publication of the notice of proposed amendment, and upon further review of the matter, it has been determined to adopt the amendments with the modifications discussed.

EXECUTIVE ORDER 12291

This is not a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that these amendments will not have a significant impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 171

Customs duties and inspection, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

AMENDMENT TO THE REGULATIONS

Part 171 Customs Regulations (19 CFR Part 171), is amended as set forth below:

PART 171—FINES, PENALTIES AND FORFEITURES

1. The general authority citation for Part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

2. Appendix B to Part 171 is amended by revising paragraphs (B)(2) and (B)(3) to read as follows:

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C 1592

* * * * *

(B) * * *
(1) * * *
(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud.* A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

* * * * *

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: June 7, 1989.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 6, 1989 (54 FR 36906)]

(T.D. 89-84)

APPROVAL OF UNIMAR, INCORPORATED AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Unimar, Incorporated as a commercial gauger.

SUMMARY: Unimar Incorporated of Houston, Texas recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Unimar meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Unimar, Incorporated, 14511 Woodforest Boulevard, Houston, Texas 77015, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins,
Office of Laboratories and Scientific Services, U.S. Customs Service,
1301 Constitution Avenue NW, Washington, D.C. 20229,
(202-566-2446).

Dated: August 30, 1989.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, September 6, 1989 (54 FR 37076)]

19 CFR Part 175

(T.D. 89-85)

**TARIFF CLASSIFICATION OF SCROLL-CUT TIN
FREE STEEL SHEET**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice of a change in the tariff classification of scroll-cut tin free steel sheet, cut to length, and scroll-cut tin free steel sheet which has been lacquered, painted or varnished (but not decorated, designed or otherwise finished). Customs previously published notice of the proposed change in classification and invited comments.

This merchandise has heretofore been classified under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.25, Tariff Schedules of the United States (TSUS). The column 1 rate of duty under item 657.25, TSUS, is 5.7 percent ad valorem. Merchandise so classified is not subject to import restrictions imposed by Voluntary Restraint Agreements or VRAs.

The merchandise in question will now be classified under the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, if electrolytically coated or plated with base metal other than tin, lead, or zinc, in item 609.17, TSUS. The column 1 rate of duty under item 609.17, TSUS, is 5.7 percent ad valorem. Merchandise so classified is subject to VRAs.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse for consumption, on or after October 20, 1989.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division, Office of Regulations and Rulings (202) 566-8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In response to a petition received on behalf of Bethlehem Steel Corporation under the authority of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), Customs agreed to review the classification of scroll-cut, tin free steel sheet, and tin free steel sheet which has been scroll-cut and also lacquered, painted or varnished (but not decorated, designed or finished). Customs published notice in the Federal Register on April 18, 1989 (54 FR 15440), that the classification in question was under review and invited public comments on the proposed change. Five (5) comments were received in response to the notice.

The merchandise affected by this decision is tin free steel sheet, which is black plate (*i.e.*, cold-rolled steel sheets, not coated, in thicknesses ranging from 0.0055 inches to 0.0149), electrolytically coated with metallic chromium oxide, and cut to a nonrectangular shape by scroll cutting. Scroll cutting involves the shearing of each end of a sheet to form a pattern of interlocking notches which fit into one another. The sheet may then be lacquered, painted, or varnished. These sheets are suitable for use in making cans and can ends for beverages and other food products.

Effective January 1, 1989, the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), replaced the Tariff Schedules of the United States (TSUS) as the tariff code of this country. However, because the VRAs will continue in effect through September of 1989, and a product's coverage under a particular Arrangement will depend on how it is classified under the TSUS, it is necessary, for purposes of the VRAs, to resolve this issue under the TSUS.

In a letter dated March 13, 1978 (056338), Customs ruled that scroll-cut electrolytic tin plate or sheet was classifiable under the provision for articles of iron or steel, not coated or plated with precious metal, of tin plate, under item 657.15, TSUS, if of tin plate. If of iron or steel without actual tin plating, classification as held to be under the provision for other articles of iron or steel, in item 657.20, TSUS. The scroll-cut sheets in this case were found to be articles or products, rather than sheets. By letter dated September 11, 1978 (057211), Customs ruled that scroll-cut tinplate sheets were classifiable in item 657.15, TSUS. The ruling noted that the scroll pattern was designed to serve a specific purpose which takes the tinplate beyond the description of a basic material. Finally, a letter dated April 23, 1986 (077760), cited rulings 056338 and 057211, and confirmed that scroll-cut tin free steel sheets sprayed with an epoxy phenolic lacquer, then heated and dried, were classifiable in item 657.25, TSUS.

SUMMARY OF COMMENTS

Of the five (5) comments received, three (3) favored the proposed change and two (2) opposed the change. Those favoring the change made the following arguments:

(1) the merchandise is encompassed by item 609.17, TSUS, because it is a steel sheet for purposes of the TSUS, is electrolytically coated other than with tin, lead, or zinc, and is cut to a nonrectangular shape by scroll cutting;

(2) scroll cutting is not an additional process that advances the merchandise beyond the status of a basic shape or form because the steel sheet is still within the product description contained in item 609.17;

(3) the provision in item 609.17, TSUS, is relatively more specific than the provision in item 657.25, TSUS, for articles of iron or steel; and

(4) conclusions reached in some of the existing rulings on this merchandise are based on incorrect statements of fact.

Those opposing the proposed change in classification made the following arguments:

(1) the classification of scroll-cut tin free steel sheet is well known in the importing community, as evidenced by the cited Customs rulings;

(2) there has been no change in the way the merchandise is manufactured that might serve as a basis for changing its classification; and

(3) because scroll-cut tin free steel sheet has previously been excluded from coverage under the VRAs, any proposal to change the tariff status of this merchandise should be addressed at negotiating sessions with an individual country or countries.

ANALYSIS OF COMMENTS

Customs agrees with the comments submitted in favor of the proposed change in classification. The merchandise in question satisfies each of the particular requirements necessary for classification in item 609.17, TSUS. With respect to scroll cutting, Customs believes that no step in the creation of merchandise otherwise classifiable as a basic shape or form of iron or steel can, at the same time, be an advancement of that merchandise beyond the status of a basic shape or form. Scroll cutting merely results in steel sheet which is nonrectangular in shape, as provided for in item 609.17. The additional steps of lacquering, painting or varnishing scroll-cut, tin free steel sheet are permissible treatments allowed by Schedule 6, Part 2, Headnote 1, TSUS. Customs believes that the requirements for classification in item 609.17, TSUS, are more difficult to satisfy than are those of item 657.25. Consequently, item 609.17 is the relatively more specific provision. Finally, Customs believes that conclusions contained in some of the cited rulings on this merchandise

may have been based not on incorrect statements, but on a misapplication of the stated facts.

With respect to the comments opposing the change in classification, Customs believes the fact that classification of this merchandise in item 657.25, TSUS, may be well documented by the existing rulings, and the fact that there has been no change in the way this merchandise is made, does not override its obligation to classify and assess duty on merchandise in its condition as imported. Moreover, concerning the comment that the proposed change in classification would bring within the coverage of the VRAs merchandise not previously intended by the negotiators to be included, Customs notes that this result was anticipated because the VRAs were negotiated with the understanding that changes in classification might occur. Relevant provisions in Part 177, Customs Regulations (19 CFR Part 177), giving Customs the authority to modify or revoke rulings, were well known to the negotiators of the VRAs.

DECISION

After careful analysis of the submitted comments, and further review of the matter, the proposed change in classification of scroll-cut tin free steel sheet and scroll-cut tin-free steel sheet which has been lacquered, painted or varnished (but not decorated, designed or finished), is adopted. The merchandise in question will be classified under the provision for plates, sheets, and strip, of iron or steel, whether or not cut, pressed, or stamped to nonrectangular shape, plated or covered with chromium oxide or with chromium and chromium oxide, in item 609.1710, Tariff Schedules of the United States Annotated (TSUSA).

This change in classification is effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after 30 days from the date of publication of this decision in the CUSTOMS BULLETIN.

Customs rulings of March 13, 1978 (056338), September 11, 1978 (057221), and April 23, 1986 (077760) are hereby revoked.

DRAFTING INFORMATION

The principal author of this document was James A. Seal, Commercial Rulings Division, U.S. Customs Service. However, personnel from other offices participated in its development.

MICHAEL H. LANE,

Acting Commissioner of Customs.

Approved: August 31, 1989.

SALVATORE R. MARTOCHE,

Assistant Secretary of the Treasury.

19 CFR Parts 162 and 171

(T.D. 89-86)

**CUSTOMS REGULATIONS AMENDMENTS CONCERNING
SEIZURE OF PROPERTY FOR POSSESSION OF CON-
TROLLED SUBSTANCES**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide certain expedited procedures when property is seized due to violations involving the possession of personal use quantities of controlled substances. The procedures comply with the requirements of the Anti-Drug Abuse Act of 1988. The regulations set forth procedures allowing an owner or interested party whose property was seized due to a violation involving possession of a personal use quantity of a controlled substance to have the property returned promptly if he can establish his innocence. The regulations also require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel. These regulations have been prepared in conjunction with the Attorney General and the Secretary of Transportation; regulations from these Departments on this subject area also appear in today's Federal Register.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Regulatory Procedures and Penalties Division, (202) 566-8317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, title VI) (the Act) requires the Attorney General and the Secretary of the Treasury to prescribe regulations to minimize the adverse impact caused by prolonged detention of property seized for civil forfeiture for violations involving the possession of personal use quantities of a controlled substance pursuant to § 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), § 511(a) of the Controlled Substance Act (21 U.S.C. 881(a)), or § 2 of the Act of August 9, 1939 (53 Stat. 1291, 49 U.S.C. App. 782). Pursuant to § 6079, such seized property shall be promptly returned where an owner can establish: (1) A valid, good faith interest in the property; (2) that he did not know of or consent to the violation; and (3) that he had no knowledge or reason to believe that the property was being or would be

used in violation of law, or that if he at any time had, or should have had knowledge that the property would be used in a violation, that he did what reasonably could be expected to prevent the violation.

Section 6079 also provides that the Attorney General, Secretary of the Treasury and the Secretary of Transportation shall provide joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actually engaged in fishing operations.

Representatives of the Department of Justice on behalf of the Attorney General, the U.S. Coast Guard on behalf of the Secretary of Transportation and the U.S. Customs Service on behalf of the Secretary of the Treasury developed, in accordance with § 6079 of the Act, proposed regulations which were published in the Federal Register (54 FR 14242) on April 10, 1989.

Eleven comments were received by Customs in response to its Notice of Proposed Rulemaking. Customs exchanged the comments it received with the Coast Guard and the Department of Justice. A discussion of the comments and our responses follows.

DISCUSSION OF COMMENTS

Comment:

Proposed § 171.53 provided that Customs will attempt to make a final administrative determination regarding the disposition of property seized for particular statutory violations involving the possession of personal use quantities of a controlled substance within 21 days of the seizure. If such a determination is not made within 21 days, Customs shall determine, within 20 days after receiving a timely submitted petition for expedited procedures, whether a petitioner established his rights to have the property returned or whether Customs should proceed with the administrative forfeiture action. Several commenters stated that this proposed procedure is contrary to the purpose of § 6079, which is to require Customs to make a final determination in 21 days or release the property. The commenters stated that § 171.53 actually provides Customs with 40 days during which to make a final determination.

Response:

We do not agree. Customs is unable to make a final determination until it receives a petition for expedited procedures establishing the elements required by the Act. The regulations provide that Customs will attempt to make a final determination within 21 days, but this is entirely dependent upon the receipt of petitions. Because the names and addresses of interested parties who should be noti-

fied of a seizure are not always known to Customs immediately, and because interested parties who are not in possession of their conveyances at the time of seizure do not always petition promptly, there are frequent delays in the administrative process which are entirely outside of Customs control. If Customs were required to make a final determination 21 days after seizure, it would be forced to deny relief when petitions are not received shortly after seizure. Parties submitting petitions which may otherwise have been granted would be forced to submit supplemental petitions or to unnecessarily file claim and cost bonds requesting judicial determinations. The procedure proposed by Customs is more flexible giving the petitioner a reasonable period of time in which to submit his petition. Further, if the petitioner does submit his petition on the same day of the seizure, Customs will make a final determination within 20 days.

Comment:

A commenter stated that "personal use quantity" should be defined as that quantity which can be easily concealed upon the body or personal effects of an individual rather than a quantity that is based on weight.

Response:

We do not agree. It is possible to conceal on a person or in personal effects amounts of controlled substances which are clearly for non-personal use. We believe that the use of weight as a criterion while, at the same time, allowing certain other variables to be taken into consideration is a preferable way to determine whether an amount of controlled substance possessed by an individual is a personal use quantity.

Comment:

Some commenters complained that the proposed procedures are harsh in that a seizure may be imposed upon an innocent owner. They also took issue with the proposed regulations assuming guilt and requiring an owner to prove his innocence before a conveyance is returned.

Response:

When a conveyance is seized because of a violation involving the possession of a personal use quantity of a controlled substance, longstanding statutory authority specifies that the burden of proof is upon the claimant to prove his innocence. Section 1615 of Title 19, United States Code (19 U.S.C. 1615), provides this unique allocation of the burden of proof in all forfeiture actions for drug-related offenses as it considers the property the "guilty" party. The purpose of the proposed procedures is to protect the interests of innocent owners by allowing them to prove their innocence as expeditiously as possible.

Comment:

One commenter stated that the Anti-Drug Abuse Act required new alternative procedures to expedite release of seized property and the substitute res procedure set forth in proposed § 171.54 should not be considered a new procedure as it is already available. Further, the commenter indicated that proposed § 171.54 was a little unclear and specifically questioned under what circumstances could an offer to post a substitute res not be accepted.

Response:

The substitute res procedure contained in proposed § 171.54 is distinct and separate from the expedited procedures. The alternative expedited procedures required by the statute were set forth in paragraphs (a) and (b) of proposed § 171.53. Release, pending a final determination, upon the deposit of the domestic value of seized merchandise, is well-established Customs procedure and is effected pursuant to 19 U.S.C. 1614. The substitute res is not mandatory. We included the substitute res procedures in these regulations for the convenience of innocent owners who may wish to consider all the ways they may obtain release of their property expeditiously. We believe, however, that some clarification is needed regarding the substitute res provision. The substitute res is not a bond; it is the actual payment of the appraised value of the property and it may be posted at any time up until a conveyance has been administratively forfeited. We stated in the proposal that the payment may be in the form of cash, irrevocable letter of credit, or a traveler's check or money order made payable to U.S. Customs. We now believe that an additional category of payment, certified funds such as a certified check, should be added. Finally, we are changing the language in § 171.54 to more clearly reflect that an offer to post a substitute res may not be accepted by Customs when the seized conveyance that is in Customs custody is evidence of violation of law or has other characteristics that particularly suit it for use in illegal activities.

Comment:

A commenter suggested that, in the case of commercial vessels appraised at very high values, the substitution of substantial bonds, rather than the equivalent of the domestic value of the vessel, be permitted to obtain release of the vessel prior to a final determination.

Response:

The Act does not require such a provision. However, Customs may choose, as it has in some past cases, to release such large vessels, pending a final determination, upon the execution of a constructive seizure agreement which requires no deposit, or upon other terms which protect the government's interest.

Comment:

One commenter suggested that a demonstration of company compliance with federal mandatory drug testing regulations be specified to constitute prima facie evidence that a company established the element set forth in proposed § 171.52(c)(3)—that it did not know or consent to the illegal use of the property or, in the event that it knew or should have known of the illegal use, it did what reasonably could be expected to prevent the violation.

Response:

We do not agree. However, compliance with federal mandatory drug-testing regulations may be considered in determining whether § 171.52(c)(3) has been satisfied.

Comment:

Some commenters were concerned that Customs will consider arrest and/or conviction records of persons in possession of controlled substances as evidence of possession for other than personal use. They stated that innocent owners may not know of the criminal records of all lessees, employees, and acquaintances who may be on board their conveyance.

Response:

A determination of whether a controlled substance is possessed solely for purposes of personal use is a determination of subjective intent based upon the totality of the circumstances. Customs will take many factors into account, including the quantity of controlled substances possessed, in determining whether the possessor of the controlled substance intended to distribute. This operates both to the advantage of interested parties and the government. It must be stressed that a person's prior arrest or conviction record for drug offenses will not necessarily be determinative of whether the drugs were possessed for personal use; it is merely one factor Customs will consider. It should also be noted that one may still be found to be an innocent owner even though persons on the conveyance had drug-related criminal records.

Comment:

A commenter questioned why hearsay (proposed § 171.52(b)(6)(ii)(C) and (F)) should be permitted to be introduced as a means of denying the right to an expedited proceeding.

Response:

Hearsay is admissible in administrative proceedings. As noted earlier, the issue of whether a controlled substance is possessed solely for purposes of personal use involves a determination of subjective intent. Hearsay may be considered in determining that intent. Further, as stated earlier, many factors may be considered in determining whether the possessor of a controlled substance intended to use the controlled substance for personal use. The types of

statements discussed in § 171.52(b)(6)(ii)(C) and (F) are just two of the factors that may be considered.

Comment:

A commenter stated that proposed § 171.51(b)(5), by stating that holding primary and direct title to property may not constitute a sufficient beneficial interest in the property to support a petition, may be disqualifying some innocent lienholders.

Response:

We agree. Accordingly, we are deleting the last sentence of § 171.51(b)(5).

Comment:

A commenter stated that the definition of "normal and customary manner" in proposed § 171.51(b)(4) is too restrictive.

Response:

We disagree. We believe that the reasonable and prudent standard combined with consideration of established norms, standards and customs is a broad definition permitting Customs to consider a large number of factors. What is "normal and customary" will vary with the circumstances of individual cases, and there may be cases in which mere compliance with an industry "norm" or customary industry practice, for example, would not be viewed by an objective person as reasonable, normal or customary under the circumstances.

Comment:

A commenter suggested that the term "sweepings" as used in proposed § 171.51(b)(6)(ii) should be clarified so as to exclude substances other than controlled substances and to reflect a collective amount of sweepings.

Response:

The term "sweepings" as used in both the Act and the proposed regulations has a clear meaning which does not include substances other than controlled substances. Further, the term "sweepings" clearly relates to small quantities which are actually evidence of larger quantities having been carried on board.

Comment:

Some commenters wished to see the applicability of the provisions for issuance of a summons to appear expanded to different kinds of vessels other than those included within the definition of commercial fishing industry vessels set forth in proposed § 171.51(b)(2). One commenter stated that the term "commercial fishing industry vessel" meant to embrace private-for-hire and charter sport fishing vessels and headboats.

Response:

Section 6079 of the Act specifies that the summons to appear in lieu of physical seizure is applicable to "a commercial fishing industry vessel as defined in § 2101(11a), (11b) and (11c) of title 46, United States Code." The definition set forth in proposed § 171.51(b)(2) is totally consistent with the definition in § 2101(11a), (11b) and (11c) of title 46, United States Code. The definition does not include sport-fishing vessels, headboats, or vessels in the barge and towing industry. Customs is not statutorily required to provide the summons to appear in lieu of seizure procedure to other vessels. However, Customs is not prohibited by the Act from expanding the procedures to other kinds of vessels. Any policy decisions to expand the summons to appear procedure to other vessels will be based on Customs experience under these regulations.

Comment:

One commenter asked that the regulations include a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call." It was also suggested that the definition include times when a vessel has been outfitted for a voyage whether or not it is still in port.

Response:

The language at issue has been taken directly from the statute and is unambiguous on its face. There is no reason to give the terms "proceeding to or from" other than their literal meaning. The literal meaning cannot be said to include times when the vessel is in port.

Comment:

One commenter suggested that the regulations clarify the provision in the summons that requires a commercial fishing industry vessel to report to the port designated in the summons to take into account unique geographic factors confronted in Alaska.

Response:

We do not agree that such clarification belongs in the regulations. Local ports have been instructed to work out appropriate operational details in unique and/or unusual circumstances.

Comment:

A commenter stated that the regulations should not specify, as they did in § 171.52(e)(3), that a statement of the facts and circumstances, supported by satisfactory evidence, should be included in a petition because § 171.52(c)(1)-(3) specifies the statutory elements of proof. The commenter stated that § 171.52(e)(3) requires more than § 6079 of the Act.

Response:

We do not agree. The section, as written, makes it clear that a petitioning party may not obtain return of the seized conveyance by merely citing § 171.52(c)(1)-(3) verbatim. Evidence is required to support the assertions.

Comment:

A commenter suggested that the regulations address the treatment of cargo carried on board a commercial vessel that is seized.

Response:

We disagree. Cargo is not part of a vessel. It is, therefore, not subject to forfeiture and may be returned to its owner. Customs already has procedures for the disposition of cargo on seized vessels.

OTHER CHANGES

Based on a change being made to the Department of Justice regulations on this subject because of a comment, Customs has decided to modify § 171.52(c) to reflect that petitioners also may establish in their petition any statutory rights or defenses beyond those encompassed by the three elements specified in § 6079(b)(2) of the Act.

CONCLUSION

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted.

REGULATORY FLEXIBILITY ACT

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service; however, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PARTS 162 AND 171

Administrative practice and procedures, Law Enforcement, Penalties, Seizures and forfeiture.

AMENDMENTS TO THE REGULATIONS

Parts 162 and 171, Customs Regulations (19 CFR Parts 162 and 171), are amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162, Customs Regulations, and the specific authority citation for § 162.22, Customs Regulations are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624

* * * * *
 § 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1460, 1594, 1595a, 1701, 1703-1708
 * * * * *

2. Section 162.22(b), Customs Regulations, is revised to read as follows:

§ 162.22 Seizure of conveyances.

* * * * *
 (b) *Facilitating importation contrary to law.* Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been used in, or to aid or facilitate, the importation, bringing in, unloading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

3. Section 162.31(a), Customs Regulations, is amended by adding a line at the end of the paragraph to read as follows:

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice* * * * For violations involving the possession of personal use quantities of a controlled substance, also see § 171.55.

* * * * *

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The contents of Part 171 are amended by adding the contents of Subsection F to read as follows:

PART 171—FINES, PENALTIES, AND FORFEITURES

* * * * *

SUBPART F—EXPEDITED PETITIONING PROCEDURES

Section

171.51 Application and definitions.

171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

- 171.53 Ruling on petition for expedited procedures.
 171.54 Substitute res in an administrative forfeiture Action.
 171.55 Notice provisions.

* * * * *

2. The general authority citation for Part 171, Customs Regulations is revised and a specific citation added for Subpart F to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

* * * * *

d. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614, Pub. L. 100-690.

3. Section 171.12(b), Customs Regulations, is revised to read as follows:

§ 171.12 Filing of petition.

(a) * * *

(b) *When filed.* If a petitioner seeks expedited relief under Subpart F of this part, a petition must be filed within the time frame stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of fine, penalty, or forfeiture incurred.

* * * * *

4. Part 171, Customs Regulations, is amended by creating a new Subpart F consisting of §§ 171.51 through 171.55, to read as follows:

PART 171—FINES, PENALTIES, AND FORFEITURES

* * * * *

SUBPART F—EXPEDITED PETITIONING PROCEDURES

§ 171.51 Application and definitions.

(a) *Application.*

The following definitions, regulations, and criteria are designed to establish and implement procedures required by Section 6079 of the Anti-Drug Abuse Act of 1988, Public Law No. 100-690, Title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those

quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution and those larger quantities generally considered to be subject to distribution.

(b) *Definitions.*

As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value.* "Appraised value" has the meaning given in section 162.43(a) of this chapter.

(2) *Commercial fishing industry vessel.* "Commercial fishing industry vessel" means a vessel that:

(A) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(B) Commercially prepared fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(C) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* "Controlled substance" has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* "Normal and customary manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* "Owner or interested party" means one having a legal and possessory interest in the property seized for forfeiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition for expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor.

(6) *Personal use quantities.* "Personal use quantities" means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any

controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in subparagraph (i) if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in subparagraph (ii). The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in subparagraph (i).

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking or distribution exists:*

(A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) one gram of a mixture of substance containing a detectable amount of—

(1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(2) cocaine, its salts, optional and geometric isomers, and salts of isomers;

(3) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (1) through (3);

(C) 1/10th gram of a mixture of substances described in clause (B) which contains cocaine base;

(D) 1/10th gram of a mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) one ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) one gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property*. "Property" means property subject to forfeiture under 21 U.S.C. 881(a)(4), (6) and (7); 19 U.S.C. 1595a, and 49 U.S.C. App. 782.

(8) *Seizing Agency*. "Seizing agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to*. "Sworn to" refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities*. The usual procedures for petitions for relief when property is seized are set forth in Subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a)(4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. App. 782 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under Subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial Fishing Industry Vessels*. Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the

seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.*

(1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the district director for the district in which the property was seized, or for commercial fishing industry vessels, with the district director having jurisdiction over the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure.

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

§ 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

§ 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tendered at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

§ 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in § 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use of acquisition which makes the property subject to forfeiture.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: September 1, 1989.

SALVATORE R. MARTOCHE,

Assistant Secretary of the Treasury.

[Published in the Federal Register, September 11, 1989 (54 FR 37600)]

ERRATUM

19 CFR Part 177

(RIN #1515-AA71)

(T.D. 89-74)

CUSTOMS REGULATIONS AMENDMENTS REGARDING CERTAIN ADMINISTRATIVE PROCEDURES; CORRECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: A document was originally published as a General Notice in the CUSTOMS BULLETIN, Vol. 23, No. 32, dated August 9, 1989, appearing on pp. 45-62, amending Part 177, Customs Regulations, by changing certain existing procedures and creating other new procedures that will enhance and expedite Customs dealings with the importing public. This document inadvertently omitted the Treasury Decision (T.D.) number. The final rule is T.D. 89-74.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division (202) 566-5868.

Dated: September 1, 1989.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

1890
The first of the year
was a very dry one
and the crops were
very poor.

The second of the year
was a very wet one
and the crops were
very good.

The third of the year
was a very dry one
and the crops were
very poor.

The fourth of the year
was a very wet one
and the crops were
very good.

The fifth of the year
was a very dry one
and the crops were
very poor.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 6, 1989.

The following are abstracts of unpublished rulings recently issued by the U.S. Customs Service. The abstracts are set forth to provide interested parties with general information regarding the types of issues currently being addressed by the U.S. Customs Service. By their inclusion herein, the rulings abstracted shall not be considered "published in the Customs Bulletin," within the meaning of section 177.10 of the Customs Regulations (19 CFR 177.10), nor do such abstracts establish a uniform practice.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 89-92)

Abstracts of Unpublished Customs Service Decisions

COMMODITY CLASSIFICATION

C.S.D. 89-92(1)—*Commodity*: Animated display figures. The figures are representations of characters, persons, or animals associated with Christmas or Halloween. Each figure is attached to a stand, each incorporates an electric motor and mechanical components which enable the figures to move, some incorporate a microprocessor which plays traditional themes. Constructed mainly of plastic, the figures range from a finely detailed sculptured look to crude caricatures, are usually dressed in textile outfits, and range in height from 12 to 48 inches. *Classification*: The figure representing a human character (a witch) is classifiable under subheading 9502.10.80, HTSUSA. The figures representing non-human characters such as monsters and ghosts associated with a particular festive occasion, are classifiable under subheading 9505.90.60, HTSUSA. *Document*: HQ 083715, dated May 23, 1989.

C.S.D. 89-92(2)—*Commodity*: Bedspreads. Two styles. Style BS-689 contains four quilted layers of fabric, with a half-ruffle drop. The top layer is 100 percent polyester raschel open-knit fabric. The lining is made of 100 percent polyester woven fabric. The filling is 100 percent fiberfill. The backing is composed of 100 percent polyester warp knit tricot. The unquilted ruffle consists of two layers of 100 percent polyester fabric. Style BS-1338 consists of three layers of quilted fabric and a half-ruffle drop. The top layer is 52 percent polyester and 48 percent cotton woven blend fabric in a floral print. The filling and backing is composed of the same fabric as style BS-689. Both styles have approximately 13-inch wide dust ruffles along three sides. The ruffle is attached to the spread by two rows of straight stitching. The fabric forming the dust ruffle extends $\frac{1}{2}$ inch above the stitching and forms a decorative ruffle edging. *Classification*: The bedspreads are classified under subheading 6304.19.1500, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, bedspreads, other, of man-made fibers, containing any embroidery, lace, braid, edging, trimming, piping or applique work, textile category 666. *Document*: HQ 084092, dated May 26, 1989.

C.S.D. 89-92(3)—*Commodity*: Bicycle helmet and helmet cover. The helmet is constructed of polystyrene and has a strap made of textile material with a plastic closure. There is a foam strip with non-woven textile backing attached to the helmet by velcro. The foam strip is used for protective padding. The helmet has a mesh cover made of 83 percent nylon and 17 percent polyurethane. The cover is to be used in conjunction with the helmet. *Classification*: The bicycle helmet imported with the bicycle helmet cover is classifiable under subheading 6506.10.6000, HTSUSA. The bicycle helmet cover imported separately is classifiable under subheading 6507.00.0000, HTSUSA. *Document*: HQ 084351, dated May 26, 1989.

C.S.D. 89-92(4)—*Commodity*: Blouse. A woman's cotton pullover blouse, not knitted or crocheted. *Classification*: The blouse is classified under subheading 6206.30.3010, HTSUSA, textile category 341, a provision for women's other cotton blouses with two or more colors in the warp and/or the filling. District Ruling Letter 837402 is revoked. *Document*: HQ 083932, dated May 24, 1989.

C.S.D. 89-92(5)—*Commodity*: Cedar boards. Tapered red cedar boards measuring $18\frac{1}{4}$ inches long by approximately $10\frac{11}{16}$ inches wide, $\frac{7}{8}$ inch (22 mm) thick at the butt end and $\frac{9}{32}$ inch (7 mm) thick at the tip. *Classification*: The red cedar boards are unfinished shingles and shakes and are classified in subheading 4418.50.0040, HTSUSA. *Document*: HQ 083795, dated May 26, 1989.

- C.S.D. 89-92(6)—*Commodity*: Costume. The article is a pumpkin costume made of felt material. It is an orange sack with openings for the wearer's head, arms, and legs. Included are a circular orange headpiece with a green stem and a black half mask. *Classification*: The pumpkin costume is classified as a set under subheading 6211.43.0090, HTSUSA, textile category 659, a provision for other women's and girl's garments of man-made fibers, not knitted or crocheted. *Document*: HQ 083852, dated May 22, 1989.
- C.S.D. 89-92(7)—*Commodity*: Diskette. The floppy diskette clam-shell serves as a protective covering for magnetic media used in computers. *Classification*: The diskette is classifiable in subheading 8473.30.40, HTSUSA, which provides for parts and accessories * * * suitable for use solely or principally with machines of headings 8469 to 8472 * * * parts and accessories of the machines of heading 8471 * * * not incorporating a cathode ray tube. *Document*: HQ 083673, dated May 19, 1989.
- C.S.D. 89-92(8)—*Commodity*: Equestrian vest. The vest is made of 80 percent polyester and 20 percent cotton; it is sleeveless with a high, rounded neckline and a center opening secured with a velcro-type closure; it is cut to the waist in front but extends approximately six inches below the waist in the back. The vest contains plastic foam columns that are about 1/2 inch thick, the sides of the vest have no filler but can be tightened by velcro-type fasteners. There is attached a nylon tie to wrap around the waist for a tighter fit. *Classification*: The equestrian vest is classified under subheading 6211.33.0050, HTSUSA, which provides for track suits, ski-suits and swimwear; other garments, of man-made fibers, vests, textile category 659. *Document*: HQ 083936, dated May 22, 1989.
- C.S.D. 89-92(9)—*Commodity*: Flooring components. Polygrate and Poly-Frame are used as flooring in the birthing and raising of baby pigs. The polygrate modular flooring sections are made from a mixture of polypropylene plastic and 20 percent by weight fiberglass, they are slotted grates with beveled edges, rounded surfaces, and side and end interlocks to provide a snap-together fit. The Poly-Frame is a series of beams plus tripod legs, joist hangers and end brackets, all made from 40 percent unsaturated polyester resin by weight mixed with 60 percent fiberglass by weight. *Classification*: Polygrate and Poly-Frame units are classifiable as other builders' ware of plastics, in subheading 3925.90.0000, HTSUSA. *Document*: HQ 083930, dated May 12, 1989.
- C.S.D. 89-92(10)—*Commodity*: Footwear. A child's black lace-up, low heel shoe with a cemented-on, unit-molded, rubber/plastic wedge sole, a pieced-together upper made of plastic and a material identified as NAPPA PUT LAMMY. *Classification*: This footwear is

classifiable under subheading 6402.99.1580, HTSUSA. *Document:* HQ 083670, dated May 18, 1989.

C.S.D. 89-92(11)—*Commodity:* Footwear uppers. Two samples B and C are cotton fabric uppers which resemble classic tennis shoes. They have a "Tretorn" lacing style sewn to the fabric insole/midsole. Due to the stitching on of the fabric insole, the size, width, arch height and all other measurements of the finished shoe have already been set. The only difference between sample C and B is that after B was made, C was produced by the additional step of punching a teardrop shaped hole out of the fabric insole. *Classification:* Samples B and C are classified under subheading 6406.10.7500, HTSUSA, which provides for parts of footwear, uppers and parts thereof, other, other, of cotton, textile category 369. *Document:* HQ 082225, dated May 25, 1989.

C.S.D. 89-92(12)—*Commodity:* Insole. The article is made of wool fibers attached with an adhesive to a non-woven substrate made of cotton fibers. *Classification:* The insole is classifiable under subheading 6406.99.9000, HTSUSA. *Document:* HQ 083938, dated May 25, 1989.

C.S.D. 89-92(13)—*Commodity:* Jewelry bag and jewelry box. The tri-fold jewelry bag in its unfolded condition measures approximately 7½ inches by 11 inches. In its folded condition, it measures approximately 4 inches by 7½ inches. The bag is made of acetate satin and has three small zippered pockets and a large open central compartment. A satin string with a knot at the end acts as a closure. The jewelry box, covered with acetate satin, measures approximately 5¼ inches by 3 inches by 1¼ inches. *Classification:* The jewelry bag is classifiable under subheading 4202.92.3030, HTSUSA. The jewelry box is classifiable under subheading 4202.92.9020, HTSUSA, textile category 670. *Document:* HQ 084130, dated May 18, 1989.

C.S.D. 89-92(14)—*Commodity:* Lipstick compact. The compact is made of injected molded plastic, measures 2½ inches by 2¼ inches by 1 inch, holds three lipstick tubes, and has a mirror embedded in the front of the compact. *Classification:* The three-lipstick compact is classified under the provision for plastic articles for the conveyance of goods in subheading 3923.10.00, HTSUSA. *Document:* HQ 083600, dated May 24, 1989.

C.S.D. 89-92(15)—*Commodity:* Rolled bars for remelting. The bars in random lengths are sheared or saw cut, shot blasted to remove mill scale and then packed in gallon drums that will be warehoused for eventual shipment to foundries in the U.S. and abroad for remelting to recover the metallic content. *Classification:* The rolled bars are eligible for duty-free entry under subheading 9817.00.9080, HTSUSA, upon compliance with the requirements

of Part 54, Customs Regulations (19 CFR 54). *Document:* HQ 083929, dated May 18, 1989.

C.S.D. 89-92(16)—*Commodity:* Smock. The garment is made of 100 percent polyester with a full front opening, five button closures, a shirt type collar, short sleeves, and two patch pockets located below the waist. The garment extends from the neck to the mid-thigh area. *Classification:* The smock is classified in subheading 6114.30.3070, HTSUSA, textile category 659. NYRL 832750 of December 29, 1988, is revoked. *Document:* HQ 083583, dated May 19, 1989.

C.S.D. 89-92(17)—*Commodity:* Sweater/scarf set. A woman's pullover made of 55 percent ramie/45 percent cotton knit fabric, three-quarter-length sleeves, a rib-knit crew neckline, rib-knit cuffs, a rib-knit waistband, and a large woven applique in the shape of a flower decorates the front. The scarf is a triangular piece of woven fabric of unstated fiber content, machine hemmed on all three edges, and matching the print of the flower applique on the pullover. The longest side measures about 40 inches while the shorter sides measure about 32 inches. This piece is temporarily attached to the label at the neck of the pullover by a single thread. *Classification:* The sweater and scarf are classified together under heading 6110.90.0042, HTSUSA, textile category 845, a provision for other women's or girl's sweaters, of other textile materials. *Document:* HQ 083979, dated May 25, 1989.

C.S.D. 89-92(18)—*Commodity:* Tent repair kit. The kit consists of a pouch that contains the kit, woven polyethylene fabric pieces, woven fabric pieces, polyester nylon knit fabric pieces, a metal circular ring, a tube of seam sealer, a tube of cement, polyester thread, a needle, plastic S-hooks, and a metal D-ring. *Classification:* The tent repair kit is classifiable in subheading 6002.43.0010, HTSUSA, as other knitted fabrics, other fabrics, warp knit, of man-made fibers, open-work fabrics. *Document:* HQ 083821, dated May 22, 1989.

C.S.D. 89-92(19)—*Commodity:* Tools. Five 120V models of hand held and directed pistol shaped hot air guns, and five corresponding 230V models. The models differ in nozzle opening, heat rating, velocity of air at the nozzle, and volume of air. Air is blown by a self-contained electrically driven motor and fan over an electric element which is wound on a mica core. The air is directed out of the gun by various attachments. Instead of industrial uses, the device can shrink tubing, cure epoxies, melt solder, preheat materials, remove paint, remove tiles, bend tiles, and shrink plastic film. One model, HJ-500S (HJ502S in the 230V model), is specifically designed for thermoplastic welding. *Classification:* Hot air tools classified as thermoplastic welding apparatus are classifiable in 8515.80.00, HTSUSA. Hot air tools classified as

electrical machines are classifiable in 8543.80.90, HTSUSA. *Document*: HQ 083699, dated May 26, 1989.

C.S.D. 89-92(20)—*Commodity*: Vehicle, multipurpose. The Range Rover is a five passenger car designed for the transport of persons. The vehicle has four doors, two permanent rows of seats, a storage area, and windows in the rear of the vehicle. The front row of seats consists of two separate arm chair type seats, which are divided by a center console. The second row is a permanently installed bench type seat with a fold-down center and outboard arm rest. This seat is split 60/40, and the back can be folded down on the seat bottom. The rear doors are hinged passenger-type doors, which swing open. The Range Rover has a tailgate for access to the rear storage area. This area is fully carpeted and is divided by a removable cover. With the cover in place, the storage area is 15 cubic feet. Without the cover, it is 36 cubic feet. The area increases to 70 cubic feet when the rear seats fold forward. The spare tire, rear stereo speakers, rear wheel arches, seat belts and side storage areas are all located in the rear of the vehicle. *Classification*: The Range Rover is properly classifiable in heading 8703, subheading 8703.24.00, HTSUSA, as a motor car and other motor vehicle principally designed for the transport of persons. *Document*: HQ 083412, dated May 19, 1989.

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